



Virginia  
Regulatory  
Town Hall

Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document

<b>Agency Name:</b>	Department (Board) of Juvenile Justice
<b>VAC Chapter Number:</b>	6 VAC 35-30
<b>Regulation Title:</b>	Regulations for State Reimbursement of Local Juvenile Residential Facility Costs
<b>Action Title:</b>	Amend
<b>Date:</b>	12 07 00

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

This regulation establishes guidelines for the Board's evaluation of requests from localities for reimbursement by the Commonwealth of local juvenile residential facility construction costs. The regulation includes criteria to assess need and establish priorities for construction projects; provides a methodology for determining appropriate costs; and outlines the process by which projects will be reviewed and approved by the Board. The regulation also delegates to the

Department the responsibility to develop "Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities" which address technical matters of construction and furnishings. The Guidelines are incorporated into the regulation by reference. Finally, the regulation offers a framework to ensure the fair and equitable distribution of state funds provided for reimbursing local facility construction costs.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

Code of Virginia § 66-10 (6) gives the State Board of Juvenile Justice the power and the duty "to promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

Code of Virginia § 16.1-309.5 gives the Board the specific authority "to promulgate regulations to serve as guidelines in evaluating requests for reimbursements [of juvenile residential facility construction, renovation, maintenance and operating costs] and to ensure the geographically equitable distribution of state funds provided for such purpose.

In addition, Code of Virginia § 16.1-309.9 directs that "the State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation, operation and evaluation of the range of community-based programs, services and facilities authorized by this article."

Finally, Code of Virginia §§ 16.1-322.5 through 16.1-322.7 address the Board's authority with regard to the private construction, management and operation of local or regional juvenile detention homes. Section 16.1-322.7 directs that "the State Board shall make, adopt and promulgate regulations governing the following aspects of private management and operation of local or regional detention homes or other secure facilities: (1) the schedule for state reimbursement to the cities or counties or nay combination thereof, as the case may be, for costs of construction; . . . (3) Minimum standards for the construction, operation, equipment, administration, and operation of the facilities. . . [and] (8) such other regulations as may be necessary to carry out the provisions of this article."

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

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The Department has held extensive discussions with localities and their architectural and engineering firms concerning this regulation and the Department's "Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities" which is incorporated into the regulation by reference. The discussions fall into two broad categories: issues concerning this regulation itself, and issues concerning the referenced Guidelines. The comments concerning the guidelines are not directly addressed in this review inasmuch as they are being considered in a separate process that will include opportunity for public comment and a report to the Board of Juvenile Justice.

As for the regulation itself, there is agreement that the regulation needs to be amended for two major reasons:

First, there is a need to accommodate the statutory requirement in Code of Virginia § 309.5 that "no such reimbursement for costs of construction shall be made . . . unless the plans and specifications, including the need for additional personnel therefor, have been submitted to the Governor and the construction has been approved by him."

Second, there is a need to update the regulation, since a number of referenced statutes have changed since this regulation was promulgated.

In addition, a number of specific comments were offered concerning the reimbursement process. (Comments addressing primarily the application of the Guidelines are not included below.)

"Add to the process -- on-board review/approval meetings between locality and DJJ to expedite the review and approval process for Planning Study and other phases of the project."

"Use a project contingency that is realistic given the level of uncertainty with the project budget estimate at the 15% stage.

"Revision of 'means cost estimate' to be tailored to a juvenile facility. If the current means cost method is based on a minimum security multi-story adult jail and not a secure one-story juvenile facility, then suggest the estimate be modified to reflect the level of security and cost required of a juvenile facility."

"Perhaps DJJ should contact R.S. Means and see if they can do a cost guide for juvenile detention centers in addition to jails since the basis for DJJ's cost estimating is based on Means' jails cost data."

"Change reimbursement process? Look at the process Dept of Corrections uses if it works well. If not, consider reimbursing at certain stages of project completion?"

"On the issue of reimbursements, . . . if DJJ would make a reimbursement at the 50% completion point (or some other point), the end result would be the same to the state, they would still have control over the final reimbursement and yet the localities would not have to front all

the money until months (or years in some cases) after the construction is complete and the facility occupied."

"For purposes of reimbursement, define construction costs as total project costs and include free standing equipment as part of these costs."

"Perhaps the issue of 'rated capacity' needs to be re-evaluated and recognize that a lot of localities do and have to double bunk at times and DJJ needs to give guidance on how kids should be double bunked."

## Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

The regulation sets forth the following specific measurable goals:

1. To "ensure that an optimum number of children are provided high quality services at a minimum cost to the locality and to the Commonwealth" [6 VAC 35-30-10];
2. To provide "a guideline in evaluating requests for reimbursement of local facility construction costs" [6 VAC 35-30-30];
3. To provide "criteria to assess need and establish priorities" [6 VAC 35-30-30];
4. To ensure the fair and equitable distribution of state funds provided for reimbursing local facility construction costs [6 VAC 35-30-30]; and
5. to provide criteria for private construction of detention or other residential facilities" [6 VAC 35-30-30].

The regulation is generally effective in accomplishing these stated goals, particularly goals 2, 3 and 4. There has been no occasion to apply goal #5 since the regulation was promulgated, inasmuch as there has been no proposal for private construction of detention or other residential facilities for juveniles. The Department hopes to enhance the regulation's effectiveness in advancing goal #1 (providing high quality services at a minimum cost) by amending the "Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities" which are incorporated into this regulation by reference.

The regulation appears to be clearly written and easily understood by those to whom it applies (generally, administrators of local government, their architectural and engineering firms, and professionals who operate juvenile residential programs).

The regulation is essential to the public safety because juvenile detention facilities are essential to the public safety, and this regulation provides a mechanism for ascertaining the need for such facilities, assuring the appropriate design, construction and equipment of such facilities, and reimbursing localities for the cost of construction, renovation, expansion and furnishing of such facilities.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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The Department has considered terminating the regulation and issuing in its place a set of reimbursement guidelines similar to its "Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities." This alternative is not recommended for two reasons. First, the Code of Virginia clearly directs the State Board to promulgate regulations governing the reimbursement process (see § 16.1-309.5.C.). Second, the legal status of the "Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities" and any other "guidelines" issued by the Department might be questionable without the authorization of the current regulation, since there is no statutory basis for the Department to issue such guidance apart from the Board's regulatory mandate.

## Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

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The Department recommends amending the regulation to reflect changes that have been made in applicable statutes since the regulation was adopted.

Also, the Department proposes to expand the scope of the regulation, which currently applies only to construction projects for which the sponsor seeks reimbursement from the Commonwealth. Code of Virginia § 16.1-249.A (3) and (4) gives the Department the authority to approve certain residential facilities in which juveniles may be detained. Amendments to this regulation provide a rational basis upon which the Department may approve the physical plant aspects of such facilities. The expanded regulation would be entitled "Regulations for APPROVING JUVENILE RESIDENTIAL FACILITIES and for State Reimbursement of Local Juvenile Residential Facility Costs."

In addition, the Department proposes to streamline the "Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities" which are referenced in the regulation, and to solicit public comment on the contemplated changes.

## Substance

*Please detail any changes that would be implemented.*

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A new section 6 VAC 35-30-35 is proposed, requiring the Department to publish guidelines governing the sponsors' submission of projects for review by the Department, the Department's procedures for evaluating project proposals, the process for resolving differences between the sponsor and the Department, and the procedure for submitting the project proposal to the Board, along with any issues that could not be resolved between the Department and the sponsor.

Amended 6VAC35-30-40 (1) would require the Department to publish an annual schedule of the dates by which materials are due in connection with reimbursement requests, and the dates by which the Board must act in order to meet deadlines required by other authorities. Incomplete or late submissions will not be submitted to the board or other applicable authority during the current review cycle.

6VAC35-30-40 (2) is amended to accommodate the approval of the Secretary of Public Safety on behalf of the Governor (see Code of Virginia § 16.1-309.5.C.).

Amended 6VAC35-30-40 (3) clarifies that the next Board action is based upon the submitted planning study, including architectural and engineering drawings at the 15% complete stage. Again, provision is made specifically for review by the Secretary of Public Safety.

6VAC35-30-60.D. is amended to clarify that sponsors may be permitted to meet the requirements of the needs assessment in phases (and be reimbursed as each phase is completed) only if they have requested such an arrangement at the time the planning study is submitted.

6 VAC35-30-90, 6 VAC 35-30-100, 6 VAC 35-30-130 A, 6 VAC 35-30-130 C and 6 VAC 35-30-140 are amended to provide the regulatory basis for the Department's approval of detention homes and group homes as required by Code of Virginia § 16.1-249.A (3) and of other places that may be designated by the court pursuant to Code of Virginia § 16.1-249.A (4) for detention or shelter care, whether or not the sponsor will seek reimbursement from the Commonwealth for the project.

### Family Impact Statement

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

Neither the current regulation nor the proposed amendments to the regulation significantly affect the institution of the family or family stability. Although delinquent children and children in need of supervision may be housed in facilities governed by this regulation, the regulation itself governs the process of monitoring construction and reimbursing the costs of construction. Thus, the regulation would neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children; would neither encourage nor discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children or elderly parents; and would neither strengthen nor erode the marital commitment nor increase nor decreased disposable family income.